

Child Welfare and the Juvenile Court

KATHERINE HUNT FEDERLE*

The debate over welfare has been waging since its inception in 1935. Each subsequent administration has attempted in one way or another to reform the welfare program. One important group has largely been left out of the debate over welfare—children. In her Article, Professor Federle contends that the failure to include children and their interest in the welfare reform debate will adversely affect the juvenile court system and the children served by that system. The Article examines the historical roots of the juvenile court and points out that the juvenile court has generally been a court for the poor. Professor Federle concludes by examining the impact that welfare reform has had on the juvenile court system.

I. INTRODUCTION AND OVERVIEW

Providing welfare assistance to the poor has been a source of continuing political controversy and debate. Initially implemented as a part of the Roosevelt Administration's Social Security Act of 1935, welfare was to provide assistance to female heads of households who had been widowed or deserted.¹ While the law drew little attention at its implementation, an escalating caseload after World War II triggered the passage of state regulations designed to minimize caseloads and costs by restricting eligibility for benefits. Many of these laws were thinly veiled attempts to regulate morality and control what was seen as female promiscuity. Thus, mothers who took in "male boarders" or received "male callers" at home or "elsewhere under improper conditions" could lose their benefits.²

* Associate Professor of Law and Director, Justice for Children Project, The Ohio State University College of Law. I would like to thank to Sol Bermann, Class of 1999, and Amy Steinkamp, Class of 2001, for their research assistance. The research for this Article was supported by a writer's grant from The Ohio State University College of Law. I thank Dean Gregory Williams for his continued support of my work.

¹ See REBECCA M. BLANK, *IT TAKES A NATION: A NEW AGENDA FOR FIGHTING POVERTY* 99 (1997). Interestingly, the purpose of these initial welfare payments was to insure that the recipient-mother could stay at home to care for her children. See *id.* Current welfare reforms radically limit this choice for mothers on welfare. For a discussion of conflicting images of motherhood under welfare reform and other laws, see generally Jane C. Murphy, *Legal Images of Motherhood: Conflicting Definitions from Welfare "Reform," Family, and Criminal Law*, 83 CORNELL L. REV. 688 (1998).

² WINIFRED BELL, *AID TO DEPENDENT CHILDREN* 47-48, 77-87 (1965). In 1960, Louisiana enacted a stringent "suitable home" rule, denying welfare benefits to an entire family if the mother had a child while on welfare. Presaging arguments that would resurface in the debates about current welfare reform, the state claimed that the rule would reduce out-of-wedlock births. See Jonathan Zasloff, *Children, Families, and Bureaucrats: A Prehistory of*

While the states were restricting access to state largesse, the Johnson Administration, through its War on Poverty initiatives, supported funding for a number of programs that empowered the poor to seek redress for the denial of benefits.³ The ensuing legal battle over welfare rights culminated in a United States Supreme Court ruling that welfare assistance must be based on need, not the worthiness of the recipient.⁴ Recognizing that "protection of children is the paramount goal of AFDC,"⁵ the Court specifically rejected state regulation of morality.⁶ Subsequent rulings further curtailed state authority to determine eligibility for benefits on Supremacy Clause grounds.⁷

However, Congress had already begun to change the contours of the welfare program. In 1967, Congress enacted several amendments to the welfare laws, including a program designed to encourage welfare recipients to work by permitting beneficiaries to keep a portion of their earnings without any reduction in benefits.⁸ Significantly, Congress also authorized the states to deny benefits to those who refused to participate in work or training programs "without good cause," and penalized states which failed to reduce the numbers of children on AFDC who were born out-of-wedlock.⁹ The Supreme Court subsequently held that these amendments did not prevent states from determining their own benefits levels or even reducing existing benefits packages;¹⁰ unsurprisingly, many states immediately cut benefits.¹¹ Consequently, no single-parent with two children was brought above the poverty line by receiving AFDC, even when combined with food stamps.¹²

Welfare Reform, 14 J.L. & POL. 225, 267-68 n.134 (1998).

³ See, e.g., Zasloff, *supra* note 2, at 268-69.

⁴ See generally *King v. Smith*, 392 U.S. 309 (1968).

⁵ *Id.* at 325.

⁶ See *id.* at 315-16. In *King*, the Supreme Court invalidated an Alabama "substitute father" rule denying AFDC benefits to eligible children if their mother "cohabited" with a man, regardless of his legal obligation to provide or voluntary assumption of support. Mr. Williams, the alleged substitute father, was, in fact, not obligated under Alabama law to support the children of the woman with whom he lived. *Id.*

⁷ See generally *Carleson v. Remillard*, 406 U.S. 598 (1972); *Townsend v. Swank*, 404 U.S. 282, 286 (1971).

⁸ See R. SHEP MELNICK, *BETWEEN THE LINES: INTERPRETING WELFARE RIGHTS* 75 (1971).

⁹ *Id.* at 74. The legislation was described as the "first purposively punitive welfare legislation in the history of American national government." *Id.* (quoting Daniel Patrick Moynihan).

¹⁰ See generally *Rosado v. Wyman*, 397 U.S. 397 (1970).

¹¹ See Zasloff, *supra* note 2, at 280.

¹² See Daan Braveman & Sarah Ramsey, *When Welfare Ends: Removing Children from the Home for Poverty Alone*, 70 TEMP. L. REV. 447, 461 (1997).

The political and public rhetoric about these enactments, however, remained entrenched in the language of culpability and moral unworthiness. The popular press, for example, ran articles about "welfare chiselers" and cynical recipients who coolly calculated the advantages of remaining on relief rather than seeking employment.¹³ The political debate mirrored this theme, with conservatives arguing that the welfare rolls had been swollen by cheats, chiselers, and promiscuous adults who had children out of wedlock and whom the government was forced to support.¹⁴ Themes of personal responsibility, adult accountability, and blameworthiness were woven into the debate. These arguments resurfaced repeatedly in Congress in following decades when other welfare-reform bills were proposed.¹⁵

Subsequent efforts to reform welfare met with mixed success. The Nixon Administration's proposal to eliminate welfare, provide a guaranteed income, and establish a work requirement¹⁶ was defeated by both liberal and conservative opposition. Liberals argued that the income levels established by the proposal were too low;¹⁷ the work requirement was decried as racist and denied welfare mothers the "right to refuse to work."¹⁸ Conservatives again claimed that the proposal would subsidize out-of-wedlock births and proposed a return to eligibility requirements based on the moral worthiness of the recipient.¹⁹ The

¹³ JAMES T. PATTERSON, *AMERICA'S STRUGGLE AGAINST POVERTY, 1900-1985*, at 88-90 (1985).

¹⁴ "I don't want to see my taxes paid for children out-of-wedlock. I'm tired of professional chiselers walking up and down the streets who don't work and have no intention of working." *Id.* at 108 (quoting Barry Goldwater).

¹⁵ See Zasloff, *supra* note 2, at 298-99. Zasloff argues that neither liberals nor conservatives have adopted a political position on welfare that accurately reflects the public's position on the issue. He contends that neither group has made a serious commitment to getting jobs for welfare recipients. Zasloff contends that the dysfunctional welfare bureaucracy is simply a reflection of these dysfunctional politics. See *id.* at 298-306.

¹⁶ See *id.* at 275. Zasloff argues that the Nixon proposal should have garnered liberal support but was attacked primarily because it contained a work requirement. See *id.* at 276. For an in-depth discussion of the Nixon welfare proposal, see generally VINCENT J. BURKE & VEE BURKE, *NIXON'S GOOD DEED: WELFARE REFORM* (1974).

¹⁷ See Zasloff, *supra* note 2, at 276. The levels established were lower than benefits already offered in some states, so many welfare beneficiaries would lose benefits under the Nixon proposal.

¹⁸ *Id.* at 277. A Senate hearing on the plan, attended by welfare mothers, was acrimonious.

¹⁹ See *id.* at 275. Senator Russell Long of Louisiana, then Chairman of the Senate Finance Committee, threatened to overturn the Supreme Court's decision in *King* by reinstating substitute-father rules. This was one in a series of proposals by Long to amend welfare. See MELNICK, *supra* note 8, at 120-24.

Carter Administration's proposal suffered a similar defeat because it, too, linked jobs to welfare.²⁰

The Reagan Administration's welfare reform agenda met with greater success because it never directly proposed reform legislation. The Reagan agenda focused on budget cuts rather than on specific legislation addressing welfare. By slashing federal spending on welfare and other social programs,²¹ Reagan was able to accomplish a key conservative goal of limiting benefits to those unable to work.²² Thus, only the "truly needy"²³ would be eligible for welfare benefits; those capable of work would not.²⁴ Although subsequent attempts to reintroduce more stringent eligibility requirements failed,²⁵ the initial reforms met with little opposition.²⁶

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Act)²⁷ is the most recent attempt to reform the welfare system in the United States. Spurred on by public perceptions and familiar conservative political claims,²⁸ Congress implemented the Act to address the "national crisis" created by out-of-wedlock pregnancies and births.²⁹

²⁰ See Zasloff, *supra* note 2, at 284–85. The Nixon and Carter proposals had much in common. One of the guiding principles to Carter's reform proposal was the rule that "no non-working family will have higher income than a comparable working family." MELNICK, *supra* note 8, at 118.

²¹ See Zasloff, *supra* note 2, at 286. Zasloff credits Reagan's success with his skillful use of budgetary procedures.

²² See *id.* Zasloff argues that Reagan's success illustrates the flaws in the "left's preferred strategy for welfare politics." *Id.* That strategy, which focused on a guaranteed income and a negative income tax, failed to garner popular political support and was largely discredited by conservatives when Reagan became President. Without a "politically feasible program," "liberals sleep-walked through the decade." *Id.* at 285–87.

²³ The truly needy were those incapable of working, according to Health and Human Services Secretary Richard Schweiker. See MELNICK, *supra* note 8, at 127.

²⁴ See MELNICK, *supra* note 8, at 127. Health and Human Services Secretary Richard Schweiker argued that welfare should not be used to supplement the incomes of the working poor. See *id.*

²⁵ See Zasloff, *supra* note 2, at 287.

²⁶ Zasloff notes that "for the most part, liberal Democrats acceded to the changes without much of a fight" because they had no cohesive alternative plan to propose. *Id.* at 287.

²⁷ Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.). The Act was the second attempt at reform during the Clinton Administration. The first attempt, proposed by the Clinton Administration, was defeated by a coalition of conservatives and liberals and by lukewarm Presidential support. See Zasloff, *supra* note 2, at 296–97.

²⁸ See generally Zasloff, *supra* note 2, at 298–99. Zasloff notes the "remarkable consistency" of the conservative position vis-a-vis welfare. *Id.*

²⁹ In support of the Act, Congress specifically found that the number of children living in

Key provisions include: greater state control over the administration of welfare through the creation of block grant funding,³⁰ bonus rewards for states who reduce the level of welfare participation³¹ or the rates of out-of-wedlock births,³² a five-year lifetime limit on the receipt of benefits,³³ work requirements for welfare recipients who are able to work,³⁴ and sanctions for those beneficiaries who do not comply with the work requirements.³⁵ The state may also sanction a family if an adult beneficiary fails to ensure that her minor children attend school.³⁶ Further, the Act precludes assistance to any unmarried teen mother unless she is living with a parent, legal guardian, or other adult relative³⁷ and is participating in an education or training program approved by the state.³⁸

This focus on parental culpability and immorality effectively removed the interests of children from the public policy debate. Although Congress recognized that poor children do experience severe and long-lasting problems, those effects were attributed to parental irresponsibility and illegitimacy.³⁹ For example, low birth weight, lower cognitive scores, school expulsion, and poverty are associated with out-of-wedlock births, teen mothers, and single parenthood.⁴⁰ Moreover, absent from the public policy debate is any discussion about the implications and consequences of welfare reform for children. Such an omission is particularly surprising in light of the fact that, by the government's own estimates, children comprised two-thirds of all welfare beneficiaries at the time

a single-parent home, who were born out-of-wedlock, were receiving welfare, and had significant problems constituted a national crisis. Consequently, Congress declared that "prevention of out-of-wedlock pregnancy and reduction in out-of-wedlock birth are very important Government interests and [the Act] is intended to address the crisis." 42 U.S.C. § 601 note (Supp. III 1997) (citing Pub. L. No. 104-193 § 101(10) (1996)). "The purpose . . . is to increase the flexibility of States in operating a program designed to . . . prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies . . ." *Id.* § 601(a)(3) (Supp. III 1997).

³⁰ *See id.* §§ 603, 604 (Supp. III 1997).

³¹ *See id.* § 603(a)(4).

³² *See id.* § 603(a)(2).

³³ *See id.* § 608 (a)(7) (Supp. III 1997).

³⁴ *See id.* § 607(c) (Supp. III 1997).

³⁵ *See id.* § 607(e) (Supp. III 1997).

³⁶ *See id.* § 604(i).

³⁷ *See id.* § 608(a)(5)(A)(i) (Supp. III 1997).

³⁸ *See id.* § 608(a)(4).

³⁹ *See id.* § 601 note (citing Pub. L. No. 104-193, § 101(8), (9) (1996)) (noting the negative consequences of out-of-wedlock birth and of raising children in single-parent homes).

⁴⁰ *See id.*

of enactment.⁴¹

While the consequences of welfare reform are just now being assessed, little consideration has been given to how these reforms will impact the juvenile court. This Article contends that our failure to include children and their interests in the debate over welfare reform will adversely affect the juvenile court system and the children whom that system handles. In Part II, this Article discusses welfare reform's central assumption that employment will reduce poverty. As will be shown, the experience of the working poor belies that assumption. Part III then considers the relationship between poverty and the juvenile court. It begins with an historical overview of the juvenile court's origins and concludes that the juvenile court has been, and will be, a court for the poor. The consequences of poverty for children are then analyzed. As will be shown, it is the risks associated with poverty that make juvenile court involvement likely. This Article then examines the effects of welfare reform on the juvenile court that are already apparent as well as those that seem probable.

II. WELFARE REFORM AND POVERTY: THE EMPLOYMENT MYTH

The central assumption of the Act—that employment will reduce poverty—seems unfounded. Despite a strong economy, a significant proportion of former welfare recipients are still unemployed.⁴² Moreover, for those welfare beneficiaries who left welfare for work, employment has not improved their financial circumstances.⁴³ The jobs available to those who leave welfare are often temporary and provide no real long-term stability.⁴⁴ Even if these employment opportunities are a source of steady income, the wages paid are

⁴¹ See *id.* § 601 note (citing Pub. L. No. 104-193, § 101(5) (1996)). The average monthly number of children receiving welfare has grown from 3,300,000 in 1965 to 9,300,000 in 1992. See *id.*

⁴² See ARLOC SHERMAN ET AL., CHILDREN'S DEFENSE FUND, WELFARE TO WHAT? EARLY FINDINGS ON FAMILY HARDSHIP AND WELL-BEING 8 (1998). The authors cite three separate studies in support of their contention. The first, done by the state of Washington, found that 32% of the 560 families who left TANF were unemployed. See *id.* A second study done by the state of New York found that 71% of former welfare recipients did not have employer-reported earnings. See *id.* The third study, comprising a group of 9 state studies compiled by the National Governors' Association, found that 40–50% of those leaving welfare did not have a job. The authors do not provide any details about methodologies or sample selection. See *id.*

⁴³ See *id.* The National Governors' Association study found that most former welfare recipients held jobs that only paid between \$5.50 and \$7.00 an hour. See *id.*

⁴⁴ See *id.* A study in Milwaukee County found an extremely high turnover rate in employment for former welfare recipients, with three out of four reporting they were no longer with the same employer nine months later. See *id.* at 9.

usually so low that they do not provide an income above the poverty line.⁴⁵ Further, welfare beneficiaries may lose income by leaving welfare and obtaining employment.⁴⁶

It is unlikely that children will benefit if their parents are employed. At the time of the Act's passage, sixty-nine percent of all poor children lived in a family where someone was employed.⁴⁷ Despite strong economic growth in the United States, the number of children in working-poor families has increased from 4.3 million in 1989 to 5.7 million in 1996.⁴⁸ Moreover, the federal government estimates that welfare benefit reductions will place an additional 1.3 million children below the poverty line.⁴⁹ While it is uncertain how many more children will experience poverty after welfare reform, it is clear that child poverty has increased in some states with aggressive welfare reform policies despite strong economic conditions.⁵⁰

Thus children whose parents have left welfare for work may experience greater poverty. For example, these children may encounter more material hardships than they did on welfare. Some studies have found that families who have left welfare for work were more likely to go without food, were unable to pay utility bills, and had to move because they were unable to pay rent.⁵¹ Other researchers have concluded that welfare reform has increased homelessness for

⁴⁵ Studies in Maryland, Ohio, and Wisconsin report that earnings after TANF were at or below the poverty line. *See id.* at 8–9.

⁴⁶ *See id.* at 9. The Milwaukee County study found that five out of six former welfare recipients had lower earnings or none at all after leaving welfare. *See id.*

⁴⁷ *See* ARLOC SHERMAN, CHILDREN'S DEFENSE FUND, POVERTY MATTERS: THE COST OF CHILD POVERTY IN AMERICA 33 (1997).

⁴⁸ *See* Alice Thomas, *National Survey: Welfare of State's Children Slipping*, COLUMBUS DISPATCH, May 5, 1998, at A3. Another study estimates the number of poor children at 5.5 million. *See* Melissa Healy, *Study Says Poverty Persists for Kids of Working Poor*, L.A. TIMES, March 13, 1998, at A17.

⁴⁹ *See* Braveman & Ramsey, *supra* note 12, at 447.

⁵⁰ *See e.g.*, Joel Dresang, *Child Poverty Rises Despite State's Economic Boom*, MILWAUKEE J. SENTINEL, July 10, 1998, at 4B. The child poverty rate in Wisconsin rose 11% between 1979–83 and 1992–96. At the same time, Wisconsin had a strong economy and was reforming its welfare program.

⁵¹ *See* SHERMAN ET AL., *supra* note 42, at 13, 14–15. The authors cite to several studies. They include a 1997 study done by the South Carolina Department of Social Services, which found that 17% of former recipients had no way to buy food some of the time, and a 1997 state-sponsored study in Michigan, which found that 27% of former recipients had trouble providing food for their families. *See id.* at 14–15. For a more recent study, see generally Mary Corcoran et al., *Food Insufficiency and Material Hardship in Post-TANF Welfare Families*, 60 OHIO ST. L.J. 1395 (1999).

children, even when their parents are employed.⁵² Many families also lose Medicaid when they leave the welfare rolls and consequently have found it harder to provide their children with much needed medical and health care.⁵³

Although we are just beginning to understand the effects of welfare reform, it is clear that it has not ameliorated the poverty experienced by this nation's children. Nor does the mere fact of employment ensure that children will experience fewer material deprivations. The myth of employment—that working parents are able to provide for their children—places children at serious risk, not only for material hardship but for juvenile court involvement as well. Poverty creates certain risks for behaviors that make juvenile court involvement not only possible but more likely. The next section of this Article explores this connection between poverty and the juvenile court.

III. POVERTY AND THE JUVENILE JUSTICE SYSTEM

A. *An Historical Overview*

In the early nineteenth century, poverty was attributed to the immorality of the poor.⁵⁴ This moral degeneracy, in turn, was thought to lead to rampant criminality if left unchecked by society.⁵⁵ Critics of existing welfare policies thus argued that both the penal and poor law systems, as institutions of moral control, had failed to improve the morals of the poor and were in need of reformation.⁵⁶ In 1822, the Society for the Prevention of Pauperism in the City of New York issued a report that decried the penological practice of locking up children with

⁵² See generally SHERMAN ET AL., *supra* note 42, at 16–17. An Atlanta study found that 46% of the homeless families interviewed in shelters had lost TANF benefits in the previous 12 months. Other studies found increases in the rates of homelessness because of a loss of benefits, but none had the high rates reported in the Atlanta study. Nor does employment guarantee housing. See *id.*

⁵³ See generally FAMILIES USA FOUND., *LOSING HEALTH INSURANCE: THE UNINTENDED CONSEQUENCES OF WELFARE REFORM* (1999); Sara Rosenbaum & Kathleen A. Maloy, *The Law of Unintended Consequences: The 1996 Personal Responsibility and Work Opportunity Reconciliation Act and Its Impact for Families with Children*, 60 OHIO ST. L.J. 1443 (1999). Several proposals to address these problems created by welfare reform are pending in Congress.

⁵⁴ See Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187, 1199 (1970). Professor Fox's article is, perhaps, the most influential piece written on the history of the juvenile court. Controversial at the time of publication, its "revisionist" view of the court's history is now widely accepted.

⁵⁵ See *id.*

⁵⁶ See *id.* Quaker reformers, in large part, directed the reform movement. Consequently, many of society's perceived ills were seen as moral problems. See *id.* at 1202–04.

adult prisoners and claimed that children, whose moral characters were unformed, would be corrupted by the experience.⁵⁷ A year later, the Society argued for a community response to the problem of poor children whose "ragged and uncleanly appearance . . . vile language and . . . idle and miserable habits" presaged a future of crime and depravity.⁵⁸

In response to these concerns, the New York legislature chartered the first House of Refuge in 1824.⁵⁹ The House of Refuge was authorized to receive and the courts to send children who were vagrant or had committed criminal offenses.⁶⁰ Not every child, however, was a proper subject of House placement; rather, only those children who could be rescued were sent to the House of Refuge.⁶¹ These children were peculiarly well-suited to the ministrations of Refuge workers because they were not truly criminals; rather, they were the innocent victims of their parents who were "too poor or too degenerate" to provide proper moral guidance.⁶² By segregating reformable offenders from the contaminating influence of their more criminally sophisticated peers, reformers thought they could prevent future delinquency and crime.⁶³

The House of Refuge movement gradually spread to other states and, during the course of the nineteenth century, evolved into the reform school approach.⁶⁴ The reformatory, like the House of Refuge, was grounded in similar assumptions about pauperism, vice, and crime; thus, the reform schools continued the practice of removing children from their homes and placing them in institutions.⁶⁵ However, the reform school movement also emphasized the importance of the family and sought to replicate that experience through placements in small living groups.⁶⁶ Eventually, this practice gave way to one in which children were

⁵⁷ See *id.* at 1189–90 & n.19. "Can it be consistent with real justice, that delinquents of this character, should be consigned . . . which must inevitably tend to perfect the worst degradation, to sink them deeper in corruption, to deprive them of their remaining sensibility to the shame of exposure . . . ?" *Id.* at 1189.

⁵⁸ See *id.* at 1189 & n.18.

⁵⁹ See *id.* at 1189–90. The charter was given to the Society for the Reformation of Juvenile Delinquents, the successor to the Society for the Prevention of Pauperism.

⁶⁰ See *id.* at 1190.

⁶¹ See *id.*

⁶² *Id.* at 1190–91 & n.25.

⁶³ See *id.* at 1190–91. The central precept of the House of Refuge was to save pre-delinquent youth, a concept central to juvenile justice in the following century. See *id.*

⁶⁴ See ANTHONY PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY* 46–47 (1969).

⁶⁵ See *id.* at 49–52.

⁶⁶ See *id.* at 50; see also Fox, *supra* note 54, at 1208–09.

placed with real families in real homes.⁶⁷ Unfortunately, most of these homes were located in other states and many of the children who were placed in them lost all contact with their parents and families.⁶⁸

The establishment of the juvenile court continued many of these policies and practices.⁶⁹ For example, the juvenile court continued the House of Refuge and reform school practice of handling only minor offenders and those children who were amenable to treatment.⁷⁰ As in the House of Refuge and the reform school, those children amenable to treatment were segregated⁷¹ from the more serious offenders who remained in the adult criminal justice system.⁷² Significantly, the juvenile court adopted crime prevention as its central goal through the eradication of pauperism.⁷³ Thus, the juvenile offender was broadly defined to include the vagrant as well as the law violator.

This emphasis on poverty also permitted the state to remove poor children from their parents. Initially, that removal was justified on the grounds of parental poverty without regard to parental fitness.⁷⁴ By the end of the nineteenth century, a desire to rescue children from their environments prompted the removal of children from their homes, although it seemed that only poor children were the ones in need of help.⁷⁵ Once removal was accomplished, little if any effort was made to reunite the family.⁷⁶ Instead, children were indentured until such placements became difficult to secure.⁷⁷ Institutional placement or foster care

⁶⁷ See Fox, *supra* note 54, at 1209–10. “The family system should be represented as completely as circumstances will permit, the parental control and authority being delegated by the State to the managers of the institutions, and the loving spirit of a family being infused by resident officials and by voluntary benevolent effort.” *Id.* at 1209 (citing Mary Carpenter, a noted English penal reformer).

⁶⁸ For an historical analysis of the placement of children under the reform school, see generally Catherine J. Ross, *Families Without Paradigms: Child Poverty and Out-of-Home Placement in Historical Perspective*, 60 OHIO ST. L.J. 1249 (1999).

⁶⁹ See Fox, *supra* note 54, at 1191.

⁷⁰ See *id.*

⁷¹ See *id.* at 1191–92.

⁷² See *id.* at 1191.

⁷³ See *id.* at 1207. Fox thus contends that the juvenile court was not a significant reform but merely “a continuation of both the major goals and the means of the predelinquency program initiated in New York more than 70 years earlier.” *Id.*

⁷⁴ See Marsha Garrison, *Why Terminate Parental Rights?*, 35 STAN. L. REV. 423, 434–35 (1983). Garrison argues that the child’s need for permanence may warrant a permanent denial of custody but does not justify termination of parental rights. Rather, she argues for a standard that would permit termination only if the child would suffer specific, significant harm.

⁷⁵ See *id.* at 435.

⁷⁶ See *id.* at 435–36.

⁷⁷ See *id.* at 437. Garrison attributes these difficulties to changing economic and social

replaced indenture, although adoptive placements were preferred. However, adoptions were rare because adoptive homes were difficult to find.⁷⁸

In many ways, the modern juvenile court continues to be an institutional response to the problems created by poverty. The dependency and foster care systems have retained certain practices that make poor children more likely to be the subject of a petition and less likely to escape foster care.⁷⁹ For example, some critics argue that removals are attributable to a general disdain for the rights of poor parents;⁸⁰ this may explain, in part, why poor parents are far more likely to be charged with child abuse or neglect.⁸¹ Moreover, the need to rescue children may signal a reluctance to return poor children to their parents;⁸² consequently, poor children comprise a disproportionate number of all children in the dependency and foster care systems.⁸³ The Adoption and Safe Families Act of 1997,⁸⁴ with its renewed emphasis on permanency planning leading to adoption rather than reunification, signifies a return to child-rescue practices that disregard the rights of poor parents.⁸⁵

Some of these nineteenth century attitudes about the poor also pervade modern juvenile justice policies and practices. For example, the juvenile court has continued to handle only those cases involving children amenable to treatment and capable of reform; the more serious offenders and offenses are still handled by the criminal justice system.⁸⁶ While rehabilitation plays a significant

conditions which made indenture of younger children unlikely.

⁷⁸ See *id.* at 437–38. Such placements were difficult to obtain for any child over the age of three. See *id.* at 438.

⁷⁹ See *id.* at 431–37. These practices—discouraging the child's ties with his natural family and substitute parents, and encouraging long-term placements—produce foster care drift. See *id.* at 431–32.

⁸⁰ See *id.* at 432–37.

⁸¹ See Naomi R. Cahn, *Children's Interests in a Familial Context: Poverty, Foster Care, and Adoption*, 60 OHIO ST. L.J. 1189, 1199 (1999).

⁸² See Garrison, *supra* note 74, at 439.

⁸³ See *id.* at 432–33. Garrison argues that the foster care system is part of the family law of the poor. This family law treats poor parents very differently and does not defer to parental rights. See *id.* at 433–34. For a recent examination of poor children in foster care, see Kristin Shook, *Assessing the Consequences of Welfare Reform for Child Welfare*, 2 POVERTY RESEARCH NEWS (Joint Ctr. for Poverty Research, Chicago, Ill.), Winter 1998, at 2, ¶ 5 (visited Nov. 21, 1999) <<http://www.jcpr.org/winter98/article2.html>> (finding that 40% of children in foster care came from families receiving public aid while constituting only 15% of public welfare beneficiaries).

⁸⁴ Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified as amended at 42 U.S.C. § 671 (Supp. III 1997)).

⁸⁵ See Cahn, *supra* note 81, at 1190.

⁸⁶ See, e.g., Melissa Sickmund, U.S. Dep't of Justice, *How Juveniles Get to Criminal*

role in juvenile court dispositions, the notion of the "innocent" child has largely been replaced by concepts of accountability and blameworthiness. State laws permitting the punishment of children for society's protection, however, are not inconsistent with nineteenth century approaches to child rescue that placed a heavy emphasis on punishment and redemption.⁸⁷ These seemingly incompatible goals of rehabilitation and punishment reflect the ambivalence, even animosity, expressed by early reformers about poor children.⁸⁸

As a direct descendent of pre-twentieth century welfare reform and poor law policies,⁸⁹ the juvenile court continues to be a court that is primarily for the poor.⁹⁰ Moreover, juvenile court processing itself appears to be strongly correlated to poverty. Such findings are consistent with social-control theories in which dominant groups, reacting to a perceived threat to their power or wealth, use institutions to control others.⁹¹ According to this view, the juvenile court functions as a method of social control to suppress those groups that threaten dominant interests.⁹² As members of a "most disadvantaged"⁹³ class, poor

Court, in JUVENILE JUSTICE BULLETIN, at 3 (Office of Justice Programs, Office of Juvenile Justice & Delinquency Prevention Series No. 94-0379-P, Oct. 1994). Sickmund notes that as many as 176,000 children are tried in criminal court each year. *See id.*

⁸⁷ *See* Fox, *supra* note 54, at 1194.

⁸⁸ *See id.* at 1193-94. "These little vagrants, whose depravations provoke and call down upon them our indignation are yet but children who have gone astray . . . They deserve our censure, and a regard for our property . . . requires that they should be stopped, reprov'd, and punished." *Id.* (citing from an annual report of the Society for the Reformation of Juvenile Delinquents).

⁸⁹ *See id.* at 1230.

⁹⁰ For those who work in the juvenile court system, this assertion seems indisputable; but curiously, national data sets do not provide any statistical information about the socioeconomic status of children in juvenile court. Nevertheless, we do know that material deprivation is strongly related to child abuse and neglect. *See generally* Leroy Pelton, *Welfare Discrimination and Child Welfare*, 60 OHIO ST. L.J. 1479 (1999). Moreover, to the extent race is conflated with class in the United States, it may be significant that minority youths comprise a disproportionate number of all children in the juvenile system. When coupled with data which suggest that minority children are far more likely to experience long-term poverty than are white children, one may conclude that many of the minority children in the juvenile court are also poor. However, it is difficult to know how many of these children are actually poor in the absence of any data. For one of the earliest discussions of the connections between poverty and the modern juvenile court, see generally Monrad Paulsen, *Juvenile Courts, Family Courts, and the Poor Man*, 54 CAL. L. REV. 694 (1966).

⁹¹ *See* Bohsiu Wu et al., *Assessing the Effects of Race and Class on Juvenile Justice Processing in Ohio*, 25 J. CRIM. JUST. 265, 267-68 (1997) (noting that law and the criminal justice system are used by dominant social groups to protect their interests from perceived threats posed by minorities and the poor).

⁹² *See id.* at 267. From this perspective, society is comprised of conflicting groups

African-American children are seen as a threat to middle-class values and are thus subjected to increased social control by the juvenile justice system.⁹⁴ Consequently, poor African-American children are more likely to be placed in secure detention prior to adjudication and out-of-home placements after adjudication.⁹⁵

The effect welfare reform is having, and will continue to have, on childhood poverty rates indicates that more children and their families will experience deeper poverty. Without the safety net provided by welfare and in the absence of a guaranteed living wage, more families will fall below the poverty line. The institutional void thus created by welfare reform suggests that the juvenile court system will experience greater demands on its limited resources to meet the unmet needs of poor children and their families.

B. Risks Associated with Poverty

While more poverty may mean more cases in the juvenile court system, the simple fact of poverty alone does not explain increased juvenile court involvement. However, the risks associated with poverty make it more likely for poor children and their families to end up in the juvenile court system. Poor children suffer from the myriad consequences of poverty—some of which seem to have long-lasting and perhaps irremediable effects. Moreover, many of the difficulties experienced by poor children are likely to trigger involvement with the juvenile system. These difficulties include physical, emotional, behavioral, cognitive, and environmental problems which, in turn, may result in delinquent behavior or status offending, or abuse and neglect.

competing for the same few resources.

⁹³ WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED, THE INNER CITY, THE UNDERCLASS AND PUBLIC POLICY* 6–8 (1987). Wilson notes that the term “underclass” is eschewed by some liberals as a destructive and demeaning label. Wilson argues that the real problem with the term is its appropriation by conservatives, who use the term to describe life and behavior in the inner city. Wilson uses the term to describe the very poorest segment of society, a group not adequately described by the term “lower class.”

⁹⁴ See Robert J. Sampson & John H. Laub, *Structural Variations in Juvenile Court Processing: Inequality, the Underclass, and Social Control*, 27 L. & SOC’Y REV. 285, 306 (1993). The authors looked at a data set obtained from the National Juvenile Court Data Archive. The set involved approximately 538,000 cases from 21 states. See *id.*

⁹⁵ See *id.* at 303–06. Findings from a study by Wu and Fuentes also indicate that minority offenders are more likely to be detained and that minority juveniles from welfare families are more likely to be confined. See Bohsiu Wu & Angel Ilaraza Fuentes, *Juvenile Justice Processing: The Entangled Effects of Race and Urban Poverty*, JUV. & FAM. CT. J., Spring 1998, at 41, 47–48 (1998).

While many delinquent children are poor, the relationship between socioeconomic class and delinquency is difficult to define. Some researchers hypothesize that the relative deprivation experienced by the minor may explain juvenile offending.⁹⁶ From this perspective, deprivation should be more acute for low-status minors in high-status contexts,⁹⁷ in heterogeneous situations,⁹⁸ when populations are unstable⁹⁹ or when there is a sizable minority population which may experience social, in addition to economic, deprivation.¹⁰⁰ Thus, any context in which these conditions occur should specify the relationship between socioeconomic status and delinquency.¹⁰¹ However, attempts to define the relationship in terms of relative deprivation have met with mixed success—the hypothesis does not hold across differing social contexts.¹⁰² This suggests that the mere fact of poverty is an inadequate explanation for juvenile offending.¹⁰³

⁹⁶ See Charles R. Tittle & Robert F. Meier, *Specifying the SES/Delinquency Relationship by Social Characteristics of Contexts*, 28 J. RES. CRIME & DELINQ. 430, 431–32 (1991) (noting that most theories linking SES and delinquency rely, to some degree, on a notion of relative deprivation).

⁹⁷ See *id.* at 432 (citing John W. C. Johnstone, *Social Class, Social Areas and Delinquency*, 63 SOC. & SOC. RES. 49, 49 (1978), who state that, conversely, high-status youths in high-status contexts are not deprived, so they should not commit delinquent acts).

⁹⁸ See *id.* at 432–33 (citing Albert J. Reiss, Jr. & Albert Lewis Rhodes, *The Distribution of Juvenile Delinquency in the Social Class Structure*, 26 AM. SOC. REV. 720, 720–32 (1961), who note that under this view, low-status youths would commit more delinquency in heterogeneous contexts because they have greater opportunity to compare themselves to youths of higher status).

⁹⁹ When a population changes by the entry of newcomers, individuals are more likely to reassess their own statuses relative to the new members. Moreover, an influx of newcomers often is accompanied by increased heterogeneity. Consequently, there may be more opportunities to feel deprived. In turn, one could expect more delinquency. See *id.* at 433.

¹⁰⁰ See *id.* at 434 (citing JOHN HAGAN, *MODERN CRIMINOLOGY: CRIME, CRIMINAL BEHAVIOR, AND ITS CONTROL* (1985) and Marvin D. Krohn et al., *Social Status and Deviance: Class Context of School, Social Status, and Delinquent Behavior*, 18 CRIMINOLOGY 303, 303–18 (1980), who note that from this perspective, SES and delinquency are more strongly related in urban than non-urban settings).

¹⁰¹ See *id.*

¹⁰² See *id.* at 452; see also G. Roger Jarjoura & Ruth Triplett, *The Effects of Social Characteristics on the Relationship Between Social Class and Delinquency*, 25 J. CRIM. JUST. 125, 137 (1997) (concluding that the study reveals more convincing support for opportunity explanations rather than relative deprivation arguments).

¹⁰³ Jarjoura and Triplett replicated Johnstone's study of 1,237 youths aged 14 through 18 living in the Chicago SMSA. The authors found that the data provided some support for the relative deprivation model of juvenile offending. But social class, as a factor by itself, did not explain the variation in involvement in offending, suggesting that opportunity explanations for delinquent behavior might be more plausible. See Jarjoura & Triplett, *supra* note 102, at 137.

The conditions attendant to poverty are often strongly correlated to delinquency. For example, one study indicates a relationship between delinquency and the number of setbacks experienced by the individual (defined, in part, as being born into a poor family, experiencing health problems at birth, or having a low I.Q.).¹⁰⁴ Thus, more than half of the adolescent delinquents studied had experienced five or more separate setbacks while those children who were not delinquent had no more than two setbacks.¹⁰⁵ Also, poverty may increase the likelihood of delinquency when it affects parent-child relationships and familial interactions. By considering three dimensions of informal social control—punishment, supervision, and attachment—researchers found that family poverty inhibited the capacity of families to effectively utilize informal social control; this, in turn, increased the likelihood of delinquency among adolescents.¹⁰⁶ Nevertheless, strong social controls within the family often ameliorated the effects of disadvantage. Consequently, children in poor families “characterized by consistent, loving, and reintegrative punishment, effective supervision, and close emotional ties” were at “low risk for adolescent delinquency.”¹⁰⁷

Neighborhood conditions also relate to juvenile offending. Children who grow up in poor neighborhoods with a greater degree of social disorganization may engage in more delinquent and aberrant behavior because they are less subject to adult supervision and control.¹⁰⁸ The behaviors or characteristics of neighbors also influence juvenile behavior. For example, researchers have found

¹⁰⁴ See EMMY E. WERNER & RUTH S. SMITH, *VULNERABLE BUT INVINCIBLE: A LONGITUDINAL STUDY OF RESILIENT CHILDREN AND YOUTH* 48 (1982).

¹⁰⁵ See *id.* at 48 tbl.9, (providing a table entitled *Cumulating Predictors of Serious Coping Problems in Children and Youth*).

¹⁰⁶ See Robert J. Sampson & John H. Laub, *Urban Poverty and the Family Context of Delinquency: A New Look at Structure and Process in a Classic Study*, 65 *CHILD DEV.* 523, 525 (1994). The authors reanalyzed the data from a 1950 study by Sheldon and Eleanor Glueck of 500 delinquent and 500 nondelinquent youths reared in low-income neighborhoods in central Boston. The sample used by the Gluecks was white, thus providing an opportunity to focus on issues of class rather than race. See *id.* at 523–24.

¹⁰⁷ *Id.* at 538.

¹⁰⁸ See WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* 61–64 (1997). Wilson also notes that social integration may not be beneficial when the adults in the community engage in criminal or aberrant behavior. See *id.* at 62. For a recent study confirming the effects of neighborhood on delinquent behavior, see Jens Ludwig et al., *Urban Poverty and Juvenile Crime: Evidence from a Randomized Housing-Mobility Experiment* 25 (September 1998) (unpublished manuscript, on file with author). For an exhaustive study of the correlation between neighborhood and poverty, see generally 1 *NEIGHBORHOOD POVERTY: CONTEXT AND CONSEQUENCES FOR CHILDREN* (Jeanne Brooks-Gunn et al. eds., 1997).

that juveniles who move from an area with more poor neighbors and fewer affluent ones into an area with fewer poor and more affluent neighbors engage in less delinquent behavior.¹⁰⁹ Significantly, it is the absence of affluent neighbors, rather than the presence of poor neighbors, which seems to have adverse effects on poor children.¹¹⁰ Juvenile involvement with drug and nonviolent offenses also declined significantly when these youths moved into neighborhoods with more affluent neighbors.¹¹¹

The risks associated with poverty also make victimization more likely. While children generally experience higher rates of criminal victimization than adults,¹¹² poor children are even more likely to suffer.¹¹³ For example, working-poor and welfare families report experiencing more violent and household crime than do those in nonpoor families.¹¹⁴ Poor children are more than twice as likely as nonpoor children to experience crime.¹¹⁵ More poor than nonpoor families report that they are afraid to go out into their own neighborhoods and find neighborhood conditions bad enough that they would like to move.¹¹⁶ Poor children are also more likely to attend schools that have security guards and metal detectors.¹¹⁷

¹⁰⁹ See Ludwig et al., *supra* note 108, at 25.

¹¹⁰ See Jeanne Brooks-Gunn et al., *Lessons Learned and Future Directions for Research on the Neighborhoods in Which Children Live*, in NEIGHBORHOOD POVERTY, *supra* note 108, at 279, 296. This finding is consistent with theories of collective socialization which posit that affluent neighbors impart benefits to children. These benefits may take the form of adult role modeling, monitoring, and increased resources. The authors also note that this finding is consistent with William Julius Wilson's arguments that social isolation has led to increased poverty in the inner city. See *id.*

¹¹¹ See Ludwig et al., *supra* note 108, at 26.

¹¹² See generally Eugene M. Lewit & Linda Schuurmann Baker, *Children as Victims of Violence*, FUTURE CHILDREN, Winter 1996, at 147 (noting that when all types of victimization are considered concurrently, children are victimized more frequently than are members of any other age group).

¹¹³ See Jeanne Brooks-Gunn & Greg J. Duncan, *The Effects of Poverty on Children*, FUTURE CHILDREN, Summer/Fall 1997, at 55, 58-59 tbl.1 (providing a table entitled *Selected Population-Based Indicators of Well-Being for Poor and Non-Poor Children in the United States*).

¹¹⁴ See Maya Federman et al., *What Does It Mean to Be Poor in America?*, MONTHLY LAB. REV., May 1996, at 3, 9. The article is a summary of the findings from nine national surveys on the living conditions of the poor in the United States.

¹¹⁵ See Brooks-Gunn & Duncan, *supra* note 113, at 59.

¹¹⁶ See M. Federman et al., *supra* note 114 (noting that statistically, the poor are more likely to fear going out in their own neighborhood and are more likely to indicate a desire to move).

¹¹⁷ See *id.* at 10-11.

Further, poverty means greater instability and may increase risks for status offending. For example, impoverished children are more likely to experience a set of "quiet problems" that directly affect school performance.¹¹⁸ Because they live in overcrowded and inadequate housing, poor children may be sleep-deprived when they come to school.¹¹⁹ Poor children also move more often and change schools more frequently because of economic difficulties encountered by their families; in turn, this may lead to more missed schooling and additional academic problems.¹²⁰ Further, unaffordable housing increases the risk of homelessness. In one study of New York City homeless shelters, at least one in ten poor children spent time at a homeless shelter.¹²¹ These children are also more likely to suffer serious academic problems than those with stable living arrangements.¹²²

Cognitive ability and academic achievement are also strongly related to family income. Children living below the poverty line are 1.3 times more likely than nonpoor children to experience learning disabilities and developmental delays.¹²³ Children in families with incomes less than half the poverty threshold scored significantly lower on standardized tests than did children whose family incomes were between 1.5 and 2 times the poverty threshold; even those children whose family incomes were closer to the poverty threshold had lower scores than the nonpoor children.¹²⁴ The effects of poverty on cognitive development seem to occur early and are significantly greater when children experience persistent poverty.¹²⁵ Thus, persistent poverty has negative effects on the standardized test scores of poor children—effects that seem to get stronger as the child gets older.¹²⁶

¹¹⁸ See Mary Jo Bane & Richard Weissbourd, *Welfare Reform and Children*, 9 STAN. L. & POL'Y REV. 131, 134 (1998) (citation omitted); see also RICHARD WEISSBOURD, *THE VULNERABLE CHILD: WHAT REALLY HURTS AMERICA'S CHILDREN AND WHAT WE CAN DO ABOUT IT* 9 (1995) (terming these problems a "quiet catastrophe").

¹¹⁹ See Bane & Weissbourd, *supra* note 118 (noting other additional "quiet problems" among poor children such as poor clothing, a greater frequency of hearing and vision problems, obesity, and accidental injuries).

¹²⁰ See *id.* at 134 (noting that in some urban areas approximately 80% of the children move once a year and that approximately 30% change schools annually).

¹²¹ See SHERMAN, *supra* note 47, at 25.

¹²² See Bane & Weissbourd, *supra* note 118, at 134.

¹²³ See Brooks-Gunn & Duncan, *supra* note 113, at 61.

¹²⁴ See *id.*

¹²⁵ See *id.*

¹²⁶ See Judith R. Smith et al., *Consequences of Living in Poverty for Young Children's Cognitive and Verbal Ability and Early School Achievement*, in CONSEQUENCES OF GROWING UP POOR 132, 164 (Greg J. Duncan & Jeanne Brooks-Gunn eds., 1997).

Family income appears to have the largest effects on ability and achievement in early and middle childhood, but only small or moderate effects in adolescence.¹²⁷ For example, although poverty does limit school achievement, it does not strongly relate to the number of school years completed.¹²⁸ However, high school graduation does appear to correlate to the social and psychological conditions associated with poverty.¹²⁹ Thus, family stress, parent-child interactions, or the home environment may account for differences in high school graduation rates among poor and nonpoor children.¹³⁰ Nevertheless, the statistical data about educational attainment is bleak, indicating that poor children are twice as likely as nonpoor children to drop out of school, repeat a grade, be suspended, or be expelled.¹³¹

Not surprisingly, children's income sufficiency and poverty as adults are strongly related to schooling, as is teen parenthood.¹³² Poor girls are more likely to become teenage mothers,¹³³ and they are three times more likely to have an out-of-wedlock birth than nonpoor teenage girls.¹³⁴ Although poverty itself is not a significant determinant of teenage parenthood, those teenage girls with family incomes well above the poverty line are less likely to give birth out-of-wedlock.¹³⁵ Only a small percentage of poor teenage mothers graduate from high school and most will need welfare assistance.¹³⁶ Although teen mothers constitute a very small percentage of the total welfare caseload,¹³⁷ they are far

¹²⁷ See Greg J. Duncan & Jeanne Brooks-Gunn, *Income Effects Across the Life Span: Integration and Interpretation*, in CONSEQUENCES OF GROWING UP POOR, *supra* note 126, at 596, 598.

¹²⁸ See *id.* at 604; see also Jay D. Teachman et al., *Poverty During Adolescence and Subsequent Educational Attainment*, in CONSEQUENCES OF GROWING UP POOR, *supra* note 126, at 382, 413-14 (noting that once control variables were accounted for that the number of years spent below the poverty line was not related to the educational outcomes considered).

¹²⁹ See Teachman et al., *supra* note 128, at 413-15.

¹³⁰ See *id.* at 415.

¹³¹ See Brooks-Gunn & Duncan, *supra* note 113, at 58.

¹³² See Mary Corcoran & Terry Adams, *Race, Sex, and the Intergenerational Transmission of Poverty*, in CONSEQUENCES OF GROWING UP POOR, *supra* note 126, at 461, 514.

¹³³ See *id.*

¹³⁴ See Brooks-Gunn & Duncan, *supra* note 113, at 58.

¹³⁵ See Robert Haveman et al., *Childhood Poverty and Adolescent Schooling and Fertility Outcomes: Reduced Form and Structural Estimates*, in CONSEQUENCES OF GROWING UP POOR, *supra* note 126, at 419, 443.

¹³⁶ See *id.* at 422.

¹³⁷ See U.S. GENERAL ACCOUNTING OFFICE, NO. GAO/HEHS-94-112, FAMILIES ON WELFARE: FOCUS ON TEENAGE MOTHERS COULD ENHANCE WELFARE REFORM EFFORTS, REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON HUMAN RESOURCES, COMMITTEE ON WAYS

more likely to have those characteristics associated with long-term welfare dependency.¹³⁸ These factors include the following: a failure to complete high school, lack of work experience, and the presence of children under six years of age in the home.¹³⁹ The children born to these girls are also more likely to grow up in a poor family that resides in a poor neighborhood and are at higher risk for health and educational problems.¹⁴⁰

Educational difficulties may, in turn, lead to increased juvenile court involvement. For example, renewed interest in enforcing the court's truancy jurisdiction has led to the establishment of truancy centers, to the enactment of statutes permitting the court to fine parents for their failure to ensure that their children attend school, and to the utilization of aggressive police procedures to apprehend truants.¹⁴¹ However, the truancy "problem" may be attributable in part to the way schools and school systems respond to students with learning disabilities and developmental problems.¹⁴² Characterized as disciplinary problems, many of these children are pushed out of the educational mainstream and into the juvenile court system.¹⁴³ But even for those children who remain in the educational system, repeated academic failure in an unsupportive environment could so affect self-esteem that children would rather absent themselves from school.¹⁴⁴ This has proven particularly true for poor minority girls whose academic needs are largely ignored.¹⁴⁵

Poverty-related stressors on child behavior may also implicate the court's status-offense jurisdiction. Poor children have more emotional and behavioral problems than do nonpoor children,¹⁴⁶ even though the effects of poverty on

AND MEANS 8 (1994) (noting that five percent of female-headed families receiving welfare are headed by teen mothers).

¹³⁸ See *id.*

¹³⁹ See *id.* at 3-7.

¹⁴⁰ See Haveman et al., *supra* note 135, at 422.

¹⁴¹ See David J. Steinhart, *Status Offenses*, FUTURE CHILDREN, Winter 1996, at 86, 94.

¹⁴² See *id.*

¹⁴³ See *id.*

¹⁴⁴ My experience and that of the students in my clinical courses suggest that many of our clients are so alienated from their schools that they simply will not return. Many of these clients have repeated at least one grade, sometimes several. Occasionally, they are considerably older than their classmates. Others have learning disabilities and special educational needs that are not being met. And, too, some are simply bored by an unimaginative educational program.

¹⁴⁵ See MEDA CHESNEY-LIND & RANDALL G. SHELDEN, *GIRLS, DELINQUENCY, AND JUVENILE JUSTICE* 105-06 (2d ed. 1998). Girls, too, find that their assertiveness is often characterized as a nuisance or even a menace. See *id.* at 105.

¹⁴⁶ See Brooks-Gunn & Duncan, *supra* note 113, at 62.

behavior are not as large as on cognitive development.¹⁴⁷ Nevertheless, parents of children in poor families report more problematic behaviors, such as depression, anxiety, aggression, fighting, and acting out.¹⁴⁸ Interestingly, current poverty appears to be more strongly related to externalizing behaviors, like aggression and fighting, while persistent poverty is associated more closely with such internalizing behaviors as anxiety or depression.¹⁴⁹ Poor parents, whose coping mechanisms may already be stretched to their limits, may find it difficult to deal with these problematic behaviors and may turn to the court for help they could not otherwise afford.

Finally, poverty and family income are significant determinants of child abuse and neglect.¹⁵⁰ Material deprivation is strongly related to child maltreatment—particularly serious neglect and severe violence.¹⁵¹ Thus, children in families with annual incomes below \$15,000 were 22 times more likely to have already experienced some type of abuse or neglect than children whose family incomes were \$30,000 or more per year.¹⁵² These poor children were also twenty-five times more likely to be at risk of any type of maltreatment.¹⁵³ Within each category of abuse and neglect, children in poor families were far more likely to have experienced, or more at risk for maltreatment than more affluent children.¹⁵⁴

Some researchers argue that higher rates of maltreatment among poor children reflect real differences in the incidence of abuse and neglect.¹⁵⁵ However, most of what is defined as abuse or neglect may be characterized as a deprivation of necessities;¹⁵⁶ in this sense, then, poverty alone cannot explain parental misconduct. Of course, not all poor families are abusive and child

¹⁴⁷ See *id.* at 63.

¹⁴⁸ See *id.* at 62–63.

¹⁴⁹ See *id.* at 63.

¹⁵⁰ See Diana J. English, *The Extent and Consequences of Child Maltreatment*, FUTURE CHILDREN, Spring 1998, at 39, 47. Others in this symposium discuss the connections between poverty and abuse and neglect in greater detail. See, e.g., Cahn, *supra* note 81.

¹⁵¹ See Leroy Pelton, *supra* note 90, at 1484.

¹⁵² See ANDREA J. SEDLAK & DIANE D. BROADHURST, U.S. DEP'T. OF HEALTH & HUMAN SERVS., EXECUTIVE SUMMARY OF THE THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT 10 (1996). The *National Incidence Study* (NIS) is a congressionally mandated study of child maltreatment in the United States. Data is compiled from a representative sample of over 5,600 professionals in 42 counties who come into contact with maltreated children. See *id.* at v.

¹⁵³ See *id.*

¹⁵⁴ See *id.* at 10–11.

¹⁵⁵ See *id.* at 11–12.

¹⁵⁶ See Pelton, *supra* note 90.

maltreatment does occur in families at all income levels.¹⁵⁷ Many researchers, including those who argue for the validity of the income-maltreatment findings, suggest that the stressors related to poverty and certain parental characteristics may explain the prevalence of abuse and neglect among poor children.¹⁵⁸ These include emotional problems such as depression, substance abuse, housing instability, and domestic violence.¹⁵⁹

Poor children who have been abused or neglected may experience a number of serious problems that could trigger juvenile court intervention for reasons other than abuse or neglect. In addition to physical problems of varying severity, maltreated children are more likely to perform poorly in school.¹⁶⁰ Impoverished children who are abused and neglected may also have a greater likelihood of engaging in delinquent behavior.¹⁶¹ Maltreated children often have alcohol or substance abuse problems that may make them more likely to abuse or neglect their own children.¹⁶² Moreover, children who have been abused or neglected experience psychological and emotional problems that may lead to depression, isolation, or suicide.¹⁶³

IV. THE EFFECTS OF WELFARE REFORM ON THE JUVENILE JUSTICE SYSTEM

Given the strong link between poverty and the juvenile court, it seems inevitable that the problems of child poverty will become the problems of the juvenile court system. However, the true impact of welfare reform on the juvenile court may be difficult to assess. Because of the complexity in the relationship between poverty, delinquency, status offending, and child maltreatment, it may be difficult to determine the effects of welfare reform. Moreover, many states may be unable to study the impact of welfare reform on children because no adequate monitoring systems are yet in place.¹⁶⁴ Clearly, more research is needed before any full assessment can be made, although

¹⁵⁷ See English, *supra* note 150, at 47.

¹⁵⁸ See *id.*; see also SEDLAK & BROADHURST, *supra* note 152, at 11–12.

¹⁵⁹ See English, *supra* note 150, at 46–47; see also SEDLAK & BROADHURST, *supra* note 152, at 11–12.

¹⁶⁰ See English, *supra* note 150, at 48.

¹⁶¹ See Claire Sandt, *The Link Between Early Childhood Problems and Juvenile Delinquency: A Conversation with Dr. Cathy Spatz Widom*, in WHAT I WISHED I'D LEARNED IN LAW SCHOOL: SOCIAL SCIENCE RESEARCH FOR CHILDREN'S LAWYERS 49 (ABA Ctr. on Children & the Law ed., 1997).

¹⁶² See English, *supra* note 150, at 46–47, 48.

¹⁶³ See *id.* at 48.

¹⁶⁴ See Virginia Ellis, *State Computers Fall Short in Welfare Reform*, L.A. TIMES, June 15, 1998, at A1.

reporting lags may pose significant problems.¹⁶⁵

Nevertheless, there are already indications that the juvenile system is beginning to feel the effects of welfare reform. For example, some child care agencies are reporting an increase in hunger, malnutrition, and emotional distress,¹⁶⁶ and at least one children's services agency has experienced a significant increase in the cost of purchasing cribs, beds, furniture, and appliances.¹⁶⁷ The director of that agency has attributed the increase in costs to welfare reform as more families experience greater economic constraints.¹⁶⁸ There are also indications that more poor children have been placed outside the home or in foster care by parents whose economic conditions have worsened after the parents left welfare for work or other related benefits.¹⁶⁹

Moreover, the costs of child poverty are significantly higher in the juvenile court system. The costs of foster care and adoption services, for example, far exceed the costs of cash assistance to the poor. An examination of per capita costs *prior* to implementation of the Act reveals that the federal government spent approximately \$11,698 per child on foster care maintenance, but only \$1,012 for each person on welfare.¹⁷⁰ If state contributions are considered, the cost for foster care rose to \$21,902 per child, but only to \$2,499 per person for welfare.¹⁷¹ Because wider and deeper child poverty after welfare reform will likely increase the demand for child protection,¹⁷² the costs for juvenile court

¹⁶⁵ See generally Patricia Donovan, *The Family 'Cap': A Popular but Unproven Method of Welfare Reform*, 27 FAM. PLAN. PERSP. 166 (1995) (noting that it will be difficult to measure the effects of a family cap since so few states are doing research and states that may have difficulty in separating family cap from other effects and the extent of their impact). The Act also requires the Secretary of Health and Human Services to research the benefits, effects, and costs of different state programs on "welfare dependency, illegitimacy, teen pregnancy, employment rates, and child well-being." 42 U.S.C. § 613(a) (1994 & Supp. III 1997).

¹⁶⁶ See *A Sketchy Picture of Welfare Reform*, BOSTON GLOBE, Apr. 24, 1999, at A18. The author cites a study by the Dudley Street Neighborhood Initiative discussing the impact of welfare reform on the Boston community.

¹⁶⁷ See Alice Thomas, *Agency Puts More Beds in Budget*, COLUMBUS DISPATCH, Feb. 26, 1999, at A1. Children Services of Franklin County (Columbus, Ohio) purchases these items in an effort to keep children in their homes.

¹⁶⁸ See *id.*

¹⁶⁹ See SHERMAN ET AL., *supra* note 42, at 54.

¹⁷⁰ See Mark E. Courtney, *The Costs of Child Protection in the Context of Welfare Reform*, FUTURE CHILDREN, Spring 1998, at 88, 93. These figures were obtained from the U.S. House of Representatives Ways and Means Committee.

¹⁷¹ See *id.* at 93-94. The author bases these calculations on the assumption that the average cost of foster care for children who are not eligible for funding under the Social Security Act is the same as for children who are eligible. See *id.* at 94 n.9.

¹⁷² See *id.* at 95; see also Bane & Weissbourd, *supra* note 119, at 134 (noting that

intervention will easily exceed any supposed savings from the reduction in benefits.¹⁷³

Because of the relationship between the risks associated with poverty and criminal and noncriminal misbehavior, more child poverty may mean more children in juvenile court. Even a modest increase in the court's delinquency and status offense caseloads could be costly since expenditures on out-of-home placements for delinquent minors and status offenders would exceed the cost of cash assistance.¹⁷⁴ Criminal victimization, too, has its costs. For poor children and their families, the victim, and the criminal justice system, the costs of victimization can be quite high.¹⁷⁵ If more poverty increases the risk for victimization, then the juvenile justice system would experience higher costs.

But ultimately, the real cost is borne by our nation's children. By shifting many of the problems associated with poverty to the juvenile justice system, we obscure any societal responsibility for the impoverishment of children by masking it in the language of culpability. The juvenile justice system rests on principles of accountability, blameworthiness, and personal responsibility. The children who appear before the court on delinquency and status-offense charges are culpable individuals whose personal difficulties do not excuse their behavior. Moreover, even those children who initially entered the system because of parental wrongdoing or neglect are seen as blameworthy if they violate criminal or behavioral norms.

By focusing on wrongdoing and blameworthiness, we successfully obscure society's role and deflect deeper examination of societal responsibility for the impoverishment of our nation's children. Further, delaying an evaluation of what, if any, obligation society as a whole has to its children is extremely costly

widening poverty will increase the kinds of problems children face and the number of "quiet problems" they encounter).

¹⁷³ See Courtney, *supra* note 170, at 95-97.

¹⁷⁴ See SHERMAN, *supra* note 47, at 21. The author discusses the story of one child placed in foster care who never adjusted to his placement and became delinquent. The cost of his institutionalization in the delinquent system was \$58,400. If he goes on to reoffend as an adult, his incarceration will cost the state about \$25,000 per year.

The costs of institutionalizing children can be quite high on the state level, in part because these programs are funded primarily from state revenues. 49% of total juvenile justice spending at the state level funds juvenile institutions and boot camps. See KIMURA FLORES ET AL., URBAN INST., THE CHILDREN'S BUDGET REPORT: A DETAILED ANALYSIS OF SPENDING ON LOW-INCOME CHILDREN'S PROGRAMS IN 13 STATES, at 44 (1999).

¹⁷⁵ See Ludwig et al., *supra* note 108, at 26 & n.17. Based on the authors' calculations, families who move to low-poverty neighborhoods receive a \$7,600 benefit based on the reduction in violent crime.

in economic and emotional terms¹⁷⁶ But there are also valid questions about the efficacy of such an approach. If the underlying issues that the juvenile justice system must redress are grounded in larger social, political, and policy questions, the system is bound to fail for it is not equipped to respond to these issues. We not only ensure the system's failure but we condemn our children to impoverishment.

¹⁷⁶ For a discussion of the costs of poverty, see generally, SHERMAN, *supra* note 47 (discussing consequences of poverty for children, economic costs of poverty for society, and proposed solutions to the problem of childhood poverty).